CF0000064036

(2)

APPEAL OF PRISONER

No. 1300/2000 Name [illegible]

Father's name [illegible]

Residence [illegible] Age 40 वर्ष

Sentenced 302 भा.दं.सं. On 8/11/2000

Under section S.T.R.-304/98 by [illegible]

[illegible] 302 भा.दं.सं. [illegible]

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 8/11/2000
2. Date of which copy received 8/11/2000
3. Date on which appeal sent
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 1300/2000 Name [illegible]

Continued in [illegible] Jail [illegible]

2798 Dated 9-11-2000 ~~199~~ 2000

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

[illegible]

Superintendent

Date of receipt in C.J.M's Office 10-11-2000

Date of ~~receipt~~ record to accompany 2-12-2000

Memo of Appeal of the Appeliate Court उच्च न्यायालय छत्तीसगढ़ बिलासपुर

No. 4 Dated 2-12-2000 ~~199~~

Forwarded to the उच्च न्यायालय छत्तीसगढ़ बिलासपुर

C.J. Magistrate

Date of receipt in Appeliate Court

//SURGUJA TY.//

* * *

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. 351 ..... **सन् 2001**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

14-9-2006

Mrs. Usha Chandrakar, counsel for the appellant.

Mr. Akil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 8th November, 2000, passed by the Sessions Judge, Surguja in Sessions Trial No.304/98, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life and to pay a fine of Rs.200/-, in default of payment of fine to further undergo S.I. for three months.

The case of the prosecution, in brief, is that at 6 p.m. on 1-8-1998, the accused/appellant attacked his wife Shanti Bai with backside of the axe, when in the next day morning, wife of the accused was not visible, Ramchandra informed the Sarpanch and other villagers. Thereafter, they went to the accused and enquired from him about his wife on which he disclosed that he has committed the murder of his wife by attacking with an axe and the body has been thrown in Dhauraghat Nala. The accused thereafter, took them to the place where he threw the body of Shanti Bai. They saw that the body of Shanti Bai was lying in naked position and there was an injury on the right parietal region.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A.35/ ..... **सन् 200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The matter was reported by Ramchandra in Police Station: Kamleshwarpur on 2-8-1998 at about 9 p.m. Receiving this report, the Station House Officer of the Police Station registered the case under Sections 302 & 201 of the I.P.C. Merg intimation Ex.P-6 was also given by Ramchandra. Receiving the said report, the Station House Officer left for the place of occurrence and after giving notice to the Panchas (Ex.P-16), he prepared the Panchnama (Ex.P-17) of the dead body of Shanti Bai. The Station House Officer also prepared the site plan (Ex.P-18) of the Nala from where the body was recovered. While in police custody, the accused gave memorandum Ex.P-13 on 3-8-1998, in pursuance of that he got recovered the axe under Ex.P-11 and his shirt under Ex.P-12. Broken bangles of Shanti Bai were taken into possession under Ex.P-9. Plain soil, blood stained soil and clothes of the deceased were taken into possession from the place of occurrence under Ex.P-10 Lungi of the accused was taken into possession under Ex.P-14. Body of the deceased was sent for post-mortem examination to Primary Health Centre, Kamleshwarpur where Dr. Ved Prakash Patel conducted post-mortem on the body of Shanti Bai and prepared the post-mortem report Ex.P-2. The doctor opined that the cause of death was result of the head injury and the death was homicidal in nature. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where the report (Ex.P-22) was received and as per the report, shirt & Lungi of the accused were found stained with blood. The place from where the blood stained soil was taken into possession was also found splattered with blood

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA 351 **सन् 200 1**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completion of investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Surguja.

The prosecution in order to establish charge against the accused examined five witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent. Ramchandra had illegally occupied his land when he was in custody, which was informed to him by his children, that is why Ramchandra has given evidence against him.

Learned Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mrs. Usha Chandrakar, learned counsel for the appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent.

The homicidal death of Shanti Bai has not been disputed. Apart from that, Dr. Ved Prakash Patel (PW-1), who conducted post-mortem on the body of Shanti Bai, has stated in his evidence that there were two lacerated wounds on the right side of the head, one was in the size of 6 cms. x 1 cm. x ½ cm. and another one was in the size of 4 cms. x 1 cm. x ½ cm.. There was contusion above the right ear in the size of 8 cms. x 8 cms. and there was another contusion behind the head in the size of 6 cms. x 6 cms.. He opined that the above injuries could be caused by a hard & blunt object and the injuries were sufficient to cause death in the ordinary course of nature. The death was homicidal in nature. His report is Ex.P-2. Ramchandra Yadav

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 35 सन् 200)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(PW-2) has categorically stated in his evidence that the accused made extra judicial confession before him regarding causing the death of his wife with the axe, he also disclosed where the body of his wife was lying, in pursuance of that, the body was recovered. Therefore, in view of the above evidence, it is established that the death of Shanti Bai was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, learned counsel for the appellant argued that in cross-examination the doctor has stated that the injury which was on forehead of the deceased was not tallying with the length of the blade and he has further stated that the injury which was found on forehead of the deceased could not be caused by the sharp edge of the axe. Therefore, the prosecution has not been able to establish as to how the injury was caused.

But, we do not find any substance in the argument of learned counsel for the appellant for the reason that in the first instance, the doctor has stated in his examination-in-chief that the injury, which was found on forehead of the deceased, was caused by a hard & blunt object. Therefore, size of the injury depends on the fact that how much portion of backside of the axe hit on forehead of the deceased. In this case, there is no direct ocular evidence and the case rests on circumstantial evidence, as such, the argument advanced by learned counsel for the appellant is not relevant in ascertaining involvement of the accused in the crime in question.

Ramchandra (PW-2), who is a villager, has categorically stated in his evidence that on enquiry, the accused disclosed before him that his wife has gone to forest, but on further enquiry the accused confessed that he has committed the murder of his wife by attacking with an axe and threw her

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... CO.A-35/ **सन् 2001**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

body in Dhauraghat Nala. The accused has also shown him the place where Shanti Bai was attacked. He (PW-2) saw that on the entire floor of the room there was blood. Thereafter, the accused took him to the Nala where the body of Shanti Bai was lying. At that time, Bandhan Ram, Somarsai, Baburam, Sukhiram etc. also went there along with them, they saw that the body of deceased was covered with branches of tree and there was injury on the forehead of Shanti Bai. There were no clothes on the body of Shanti Bai. PW-2 has further stated that the accused also committed the murder of his earlier wife, for that he was convicted and sentenced, came out after completing the sentence and in the same year he committed the murder of his present wife Shanti Bai. In cross-examination, he has admitted that once the accused shot arrow at him, but it could not hit him and it is incorrect to say that he is giving evidence against the accused on account of that.

Ranjeet Ekka (PW-4), Sub Inspector, has stated in his evidence that while in police custody, the accused gave memorandum Ex.P-13 and in pursuance of that he got recovered the shirt as also the axe under Exs.P-12 & P-11, respectively. Lungi of the accused was recovered under Ex.P-14. As per the report of the F.S.L., shirt & Lungi have been found stained with blood. The earth, which was taken into possession from the place of occurrence, has also been found stained with blood.

Bandhan Ram (PW-5), who was Sarpanch of the village at the relevant time, has also stated in his evidence that at about 4 p.m. when he and other villagers enquired from the accused/appellant regarding his wife, he informed that his wife as gone to her sister's place. On enquiry, it was found

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. 35/01

मामला क्रमांक ..... सन् 200

6

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that wife of the accused had not gone there and therefore, he again enquired from the accused. He took them to the Nala where the body of the deceased was found. On further enquiry, the accused informed that he has murdered his wife.

Therefore, the accused made extra judicial confession before Ramchandra Yadav (PW-2) & Bandhan Ram (PW-5). The extra judicial confession stands corroborated by the recovery of the axe and bloodstained clothes of the accused as also the recovery of the body at the instance of the accused and the recovery of bloodstained earth from the house of the accused where the offence was committed. In the circumstances, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting and sentencing the accused.

In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd//-
V.K.Shrivastava
Judge

Soma

P.T.O.

9-3-07